

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Bowen Analyst: LuAnna Hass Bill Number: SB 25
Related Bills: See Legislative History Telephone: 845-7478 Introduced Date: December 2, 2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information Confidentiality

SUMMARY

This bill would limit a state or local agency's ability to use social security numbers (SSNs) as personal identifying numbers.

This bill also would make changes to the Civil Code with regard to consumer credit reporting agencies. These changes do not affect the department and are not discussed in this analysis.

PURPOSE OF THE BILL

According to the author's office, the intent of this bill is to make SSNs more confidential.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2004, and would apply to the department's use of SSNs on and after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal and state tax laws require that an individual's SSN be used as the identifying number for that individual with regard to income taxes. Current state tax law provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Unwarranted or unauthorized disclosure of income tax return information is a misdemeanor offense.

Board Position:

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_____ N	_____ OUA	_____ PENDING

Department Director
Gerald H. Goldberg

Date
02/13/03

Under the Information Practices Act of 1977, current state law requires state and local agencies to maintain in their records only that personal information relevant and necessary to its governmental purposes, including disclosing personal information under only specific circumstances and keeping records thereof. "Personal information" is defined as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, SSN, physical description, home address, home telephone number, education, financial matters, and medical or employment history. The definition also includes statements made by, or attributed to, the individual. The Information Practices Act establishes civil remedies for the enforcement of its provisions.

Current state law prohibits any state agency from sending any outgoing United States mail to an individual containing personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless the correspondence is sealed and no personal information can be viewed from the outside of that correspondence.

A recently enacted state law limits the use of SSNs as personal identifying numbers by a person or entity. State and local agencies are currently exempt from this restriction.

PROGRAM BACKGROUND

Under current department practice, the department collects personal information from various sources, including from the taxpayer and from agencies required to report financial information. This information is used for compliance development, audit, and collection purposes. FTB does not use personal information or provide that information to third parties for any marketing purposes. As required by statute, all information received from the taxpayer is confidential and is shared with federal or state agencies only for statutorily specified purposes.

FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training annually about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action and/or is punishable by law.

The basic design of FTB's personal income tax (PIT) mainframe computer system relies on using the SSN as the taxpayer's account number. The PIT system feeds information to other related systems, including collection and audit systems. All refunds, billings, and taxpayer communications relating to the taxpayer's account, including communications regarding audit and collection activities contain the taxpayer's SSN. See Appendix A for a list of documents containing SSNs that the department currently sends through the mail. The department includes the SSN on mailings to the taxpayer to confirm the accuracy of the SSN and ensure the SSN matches the taxpayer that receives the document. In addition, taxpayers that receive a notice of tax due generally include the stub from the notice with their payment to FTB. The stub contains the taxpayer's SSN, which allows the department to apply the payment accurately and timely to the taxpayer account in the event the taxpayer fails to include their SSN on their payment.

THIS BILL

Under the California Civil Code, beginning on or after January 1, 2004, this bill would add state and local agencies to those persons that are restricted from using SSNs. Specifically, this bill would prohibit a state or local agency from:

- publicly posting or displaying an individual's SSN;
- printing an individual's SSN on any card required to access products or services;
- requiring an individual to transmit his or her SSN over the Internet unless the connection is secure or the SSN is encrypted;
- requiring an individual to use his or her SSN to access an Internet website unless a password or unique personal identification number is also required to access the website; and
- printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document to be mailed. Notwithstanding this provision, applications and forms sent by mail may include SSNs.

Further, this bill would create an exemption for state or local agencies that is similar to an exemption under current law for persons or entities. Specifically, this bill would allow a state or local agency, which has used an individual's SSN before January 1, 2004, in a manner inconsistent with the prohibitions, to continue using that individual's SSN in that manner after January 1, 2004, if the following conditions are met:

- the use of the SSN is continuous (if the use is stopped for any reason, the prohibitions will apply);
- the individual is provided with an annual disclosure beginning in 2002 informing the individual of the right to request that their SSN not be used in a manner prohibited by this bill;
- the person, entity, or state or local agency will cease using the SSN, at no charge to the individual, within 30 days of receiving a written request to cease using their SSN in a manner prohibited by this bill; and
- a person or entity, not including a state or local agency, must not deny services to an individual because the individual makes a written request to that service agency to cease using his or her SSN as prohibited by this bill.

As a result of adding state or local agencies to the provisions of current law regarding the restrictions for using SSNs, as discussed above, it should be noted that this bill would not:

- prevent the collection, use, or release of an SSN as required by state or federal law and would not prevent the use of an SSN for internal verification and administrative purposes; and
- apply to documents that are recorded, such as liens or documents open to the public pursuant to the Public Records Act, the Ralph M. Brown Act (for local legislative bodies), or records required to be made available to the public by certain judicial entities such as the California Supreme Court, Court of Appeal, superior courts, and municipal courts.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- The author's office has indicated that it is not its intent to require FTB to cease using SSNs as identifying numbers. Instead, the intent of the author is to restrict FTB's ability to print SSNs on mailings to taxpayers. The author may wish to provide an exemption for FTB or specify that this provision would not apply to FTB to the extent needed to fulfill its statutory obligations.
- This bill would prohibit a state agency from mailing documents to an individual containing their SSN. In addition, this bill contains an exemption that would allow a state or local agency that has used, prior to January 1, 2004, an individual's SSN in a manner prohibited by this bill to continue using that individual's SSN after January 1, 2004, if specific conditions are met. After preliminary review, the department may be able to meet the conditions set forth in the bill, which would allow the department to continue mailing documents containing an individual's SSN. See "Fiscal Impact," below for the department's estimated cost to satisfy the conditions. However, specifying the use of "an individual's SSN" could be interpreted that the use of the SSN could be made on a case-by-case basis as opposed to a department-wide basis. For example, the department could continue to use a particular taxpayer's SSN if that taxpayer has received documents containing the SSN prior to January 1, 2004. Similarly, the department could be prohibited from using a particular taxpayer's SSN if that taxpayer had not received any documents with the SSN prior to January 1, 2004. It would be difficult for the department to implement this provision on a taxpayer-by-taxpayer basis. The department would have to identify all individuals that received any document from us prior to January 1, 2004, so that the department could program the system to continue mailing documents containing SSNs to those taxpayers. Once those changes are made, the department's systems would be further programmed to ensure all other taxpayers (those that did not receive mailings prior to January 1, 2004) would receive documents that do not include SSNs. If the author intends for FTB to use the exemption in this bill, it is suggested that the extent of the implementation be on a department-wide basis, treating all taxpayers equally and eliminating the confusion regarding the two different classifications of individuals. Further, for clarity, the author may wish to provide a specific exemption for FTB, as noted in the previous concern.

As stated above, the author's office has indicated that the intent of this bill is to restrict the department's ability to include SSNs on documents mailed to taxpayers. Therefore, the department further analyzed the bill under the assumption that the department would not be able to use the exemption.

- Although state and federal laws require the SSN to be used as the identifying number for individual taxpayers, it does not specifically *require* the use of the SSN on every document that may be mailed to a taxpayer. Under this bill, these documents could no longer contain the taxpayer's SSN. Thus, modification to the PIT mainframe and related computer systems would be necessary to implement this bill. The department's implementation plan must contain a strategy to minimize taxpayer confusion and disruption to the PIT program. Staff is working to determine the best department-wide implementation method. Since any implementation plan would require extensive system programming, testing, and processing, as discussed below under "Departmental Costs," the department could not fully implement this provision of the bill by January 1, 2004.

To meet the intent of the bill to eliminate SSNs on material mailed to the taxpayer without major PIT program disruption and to minimize taxpayer concern, department staff recommends an extended implementation date for FTB. This extension would reduce the implementation urgency and:

- enable FTB to plan effectively for needed changes to minimize taxpayer concern and disruption to the PIT program;
 - enable FTB to obtain funding to implement the bill through the budgetary process for 2003/2004 and thereafter, in the event the department does not receive an appropriation in this bill;
 - enable FTB to work with the author to identify any cleanup legislation where provisions may be subject to misinterpretation;
 - reduce departmental costs in subsequent years that otherwise would be attributable to overtime and contracting for additional resources.
- A definition is needed for the term “administrative purposes.” For example, in addition to documents mailed to taxpayers that contain their SSN, the department, like all state agencies, mails various personnel documents to employees that contain the employee’s SSN. State agencies could be required to remove the SSN from these documents, unless the term administrative purposes was clearly defined to include employee-related matters.
 - In addition to mailing documents containing SSNs to “individuals” such as taxpayers and employees, the department mails documents such as garnishments and levies to third parties such as a taxpayer’s bank, employer, or landlord. Absent a clear definition of individual, the department would continue to send garnishments and levies containing the individuals SSN to these third parties.
 - The department provides copies of tax returns and other printed documents filed by taxpayers to taxpayers upon request. Although the copy of the tax return contains the SSN as entered by the taxpayer, the tax return is considered a form. Under this bill, the SSN restriction does not extend to forms. Absent clarification, the department would continue to include the SSN on copies of returns and other documents mailed to the taxpayer.

TECHNICAL CONSIDERATIONS

This bill refers to an annual disclosure to the individual informing them of their right to stop the use of their SSN if it is being used in a manner prohibited by this law. However, this bill states the annual disclosure shall start in 2002. For clarity, it may be preferable to specify that the annual disclosure for state or local agencies shall start in 2004.

The prohibitions in this bill would not apply to documents open to the public pursuant to the Ralph M. Brown Act (for local legislative bodies). For purposes of state agencies, the author may wish to include the Bagley-Keene Open Meetings Act.

On page five, line 33, there is an unnecessary comma between “of” and “the.”

LEGISLATIVE HISTORY

SB 168 (Bowen, Stats. 2001, Ch. 720) limits a person's or entities, other than a state or local agency, from using SSNs as personal identifying numbers. This act also grants consumers the right both to verify and to authorize the issuance of their consumer credit report information.

SB 129 (Peace, Stats. 2000, Ch. 984) requires each state agency to enact and maintain a permanent privacy policy in adherence with the Information Practices Act of 1977.

SB 1365 (Murray, 1999/2000) would have created the "Identify Theft Victim's Protection Act," which would have made it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. This bill failed passage from the Senate Committee on Public Safety.

SB 1767 (Bowen, 1999/2000) had nearly identical language to the current bill and would have given a consumer the right to place a security alert or prohibit a consumer credit reporting agency from releasing any information in the consumer's credit report without express authorization of that consumer. This bill would have specified that this provision would not impact those persons or entities with which the consumer already has an account. This bill failed passage from the Assembly Banking and Finance Committee.

SB 558 (Peace, Stats. 1997, Ch. 685) prohibits any state agency from sending any outgoing United States mail to an individual containing personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless the correspondence is sealed and no personal information can be viewed from the outside of that correspondence.

OTHER STATES' INFORMATION

Most states have privacy laws that are similar to California's privacy laws and the federal Privacy Act prohibiting various state and local agencies from disclosing personal identifying information, such as an SSN, in an unauthorized manner. Some states have additional laws relating to identity theft; however, they do not further restrict disclosure and use of personal identifying information by revenue collecting agencies.

Illinois, Massachusetts, and Minnesota also have varying identity theft laws that make it illegal to use any personal identifying information of another person to fraudulently obtain credit, money, goods, services, or property in the name of the other person.

FISCAL IMPACT

As discussed under "Implementation Considerations," staff is uncertain how this bill would be implemented and costs cannot be determined until implementation concerns have been resolved. However, if the department is required to remove SSNs from notices mailed to the taxpayer, preliminary cost estimates range from \$3.0 million to \$4.1 million. This cost includes costs resulting from increased customer service contact, processing hours, programming, testing, and maintaining departmental systems. This range depends upon the strategies available for the department to effectively implement this bill.

As discussed under "Implementation Considerations," the department may be able to continue using the SSN on documents mailed to taxpayers if the department were able to utilize exemptions under this bill. This estimate does not include the costs to meet the conditions of the exemption. Until the department receives clarification, the costs for this provision cannot be determined.

As stated above, the department could not fully implement this bill by January 1, 2004.

To ensure the department has the funding to implement this bill, the department would suggest the author add appropriation language to this bill that would cover the costs of implementation. This would allow the department to begin an implementation plan to remove SSNs from mailings in accordance with the bill. Absent an appropriation, the implementation date extension that staff recommended above under "Implementation Considerations" would allow the department to go through the normal budgetary process for the funding.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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APPENDIX A

Franchise Tax Board
Correspondence That Contain SSNs

Forms 1099 INT & 1099 G
Refund Warrants (printed and mailed by State Controller's Office)
Return Information Notice (RIN)
Notice of State Income Tax Due (STD)
Dishonored Payment Notice
Agency Offset Notice
Lottery Offset Notice
Renters Credit Verification Notice
Request for Duplicate Controller's Warrant/Stop Payment
Estimate Suspense Referral
Power of Attorney's (POA) Taxpayer Election Letter
POA – STD, NTC, RIN, Agency Offset Notice, and Dishonored Payment Notice
POA Estimate Suspense Referral
Notice of Proposed Assessments (NPA)
Notice of Revision - Revision (NRR) and Withdrawal (NRW)
Notice of Action - Revision (NAR), Affirmation (NAA), and Withdrawal (NDW)
Notice of Determination - Revision (NDR), Withdrawal (NDW), and Affirmation (NDA)
ADCORR letters (correspondence with taxpayers)
Statue of Limitation Letter
Direct Deposit Refund Letter
Demand & Request for Tax Return (approx. 600,000 a year)
Nonfiler NPA (approx. 300,000 a year)
California Wage & Withholding Information
Determination of Filing Requirement
Deferral Letter
Tax Return Located
Tax Return Received
Confirmation Letter
Response to Correspondence
Ad judicatory Letter
Frivolous Return Penalty Letter
Frivolous/Frivolous Invalid Return Letter
Returning Original Documents
W-4 Letter
Constitutional Letter
Response to Correspondence
Non-Resident/Part Year Res. Notification of CA Filing Requirement
Notice of Action-Various Versions
Protest Acknowledgement
Determination Letter-Penalties
Earnings Withholding Order
Order To Withhold
Claims filed in a Bankruptcy
Claims filed on Decedent Estates
Chief Counsel Rulings